



Wisconsin Electric Power Company (WEPCO) Clean Air Act Civil Settlement April 2003

Overview: On April 29, 2003, the U.S. Environmental Protection Agency and the Department of Justice announced a major Clean Air Act (CAA) settlement with Wisconsin Electric Power Company (WEPCO), also known as We Energies, to resolve CAA violations at several of the company's coal-fired power plants. Wisconsin Electric is a subsidiary of Wisconsin Energy Corporation, and operates five coal-fired power plants in Wisconsin and Michigan.

Under the settlement, WEPCO will spend \$600 million between now and 2013 to install state-of-the-art pollution controls to meet stringent pollution limits. The agreement requires WEPCO to install state of the art air pollution controls or elect to shut down units, representing 80 percent of its total coal-fired megawatt generating capacity. One-hundred percent of the units covered under the agreement must also comply with a declining system-wide rate and cap for sulfur dioxide (SO₂) and nitrogen oxides (NO_x) emissions.

Approximately 105,000 tons of SO₂ and NO_x emissions annually will be reduced from five coal-fired electricity generating plants in Wisconsin and Michigan. In addition, WEPCO will retire pollution emission allowances that it or others could use to emit additional pollution into the environment. WEPCO will also spend at least \$20 million to fund an environmentally beneficial project in Michigan designed to reduce mercury at coal-fired power plants, and pay a civil penalty of \$3.2 million.

Wisconsin Electric Power Company was a party in the litigation and landmark 1990 7th Circuit Court decision (*Wisconsin Electric Power Co. v. Reilly*, 893 F.2d 901 (7th Cir. 1990)), regarding the application of the Clean Air Act's NSR requirements to coal-fired utilities. The WEPCO coal-fired units that were at issue in the Wisconsin Electric decision will be shut down or controlled in 2004 under the settlement.

Background: This settlement is the latest in a series of cases to bring the coal-fired power plant industry into full compliance with the New Source Review requirements of the Clean Air Act. The WEPCO settlement represents the fifth judicial settlement under the power plants enforcement effort. Previous settlements occurred in February 2000 with Tampa Electric Company (TECO); January 2001 with PSEG Fossil LLC; and April 2003 with ALCOA, Inc., and Virginia Electric and Power Company (VEPCO).

In November 1999, the federal government sued seven other electric utility companies for CAA violations charging that these companies undertook major modifications at their power plants without installing equipment required to control pollution that causes smog, acid rain and soot. The Justice Department, on behalf of EPA, brought legal actions against dozens of coal-fired power plants controlled by American Electric Power, FirstEnergy, Illinois Power, Southern Indiana Gas & Electric Company, Cinergy,

the Southern Company, and TECO. Except for TECO, settled in February 2000, those lawsuits continue, as do the EPA's enforcement efforts against the Tennessee Valley Authority (TVA) – a federal agency that owns and operates many coal-fired, electric generating plants.

Clean Air Act Violations: The settlement resolves the federal government's claims that Wisconsin Electric violated the New Source Review provisions of the Clean Air Act at several of its plants by undertaking major modifications and increasing emissions of air pollution without also installing required air pollution controls. Specifically, the government alleges that WEPCO made major modifications at its Oak Creek Plant in Wisconsin. WEPCO spent millions of dollars on the alleged modifications, consisting of replacement of economizers, induced draft fans, waterwall tubes, reheaters and superheaters at the plant. EPA also believes, based on WEPCO's response to our information requests, that WEPCO undertook similar modifications at its other plants within the WEPCO generation system.

Environmental Benefits of the Settlement: This settlement requires WEPCO to install state-of-the-art air pollution controls on certain units within its system and to elect to install controls on other smaller units or retire them. The controls and possible retirements will result in the removal of approximately 72,300 tons per year of SO₂ and 32,600 tons per year of NO_x. WEPCO also will retire excess SO₂ emission allowances from its Acid Rain allocations each year beginning in 2008 based on 2007 emission allowances.

NO_x: Nitrogen oxides causes a variety of health and environmental impacts, such as ground-level ozone, acid rain, particulate matter, global warming, water quality deterioration, and visual impairment. Nitrogen oxide plays a major role, with volatile organic chemicals, in the atmospheric reactions that produce ozone.

SO₂: High concentrations of sulfur dioxide affect breathing and may aggravate existing respiratory and cardiovascular disease. Sensitive populations include asthmatics, individuals with bronchitis or emphysema, children and the elderly. Sulfur dioxide is also a primary contributor to acid deposition, or acid rain.

PM: Health effects of particulate matter include premature death, increased hospital admissions and emergency room visits, increased respiratory symptoms and disease, decreased lung function, and alterations in lung tissue and structure and in respiratory tract defense mechanisms. Particulate matter also is the major cause of reduced visibility in many parts of the nation.

Settlement Terms:

Injunctive Relief: WEPCO will spend an estimated \$600 million over a 10-year period to implement the following injunctive relief:

- Reduce emissions of SO₂ from about 98,500 tons per year to about 26,200 tons per year through the installation of state-of-the-art SO₂ controls on a majority of the

generating capacity of its coal-fired power plant fleet. In addition, WEPCO will either retire or install state-of-the-art SO₂ controls on an additional percentage of the generating capacity or retire those SO₂ emissions at all of its major coal-fired facilities. In addition, WEPCO will surrender excess SO₂ emission allowances each year beginning in 2008 based on 2007 emission allowances. This surrender will prevent WEPCO and others from using these allowances to emit additional pollution into the environment.

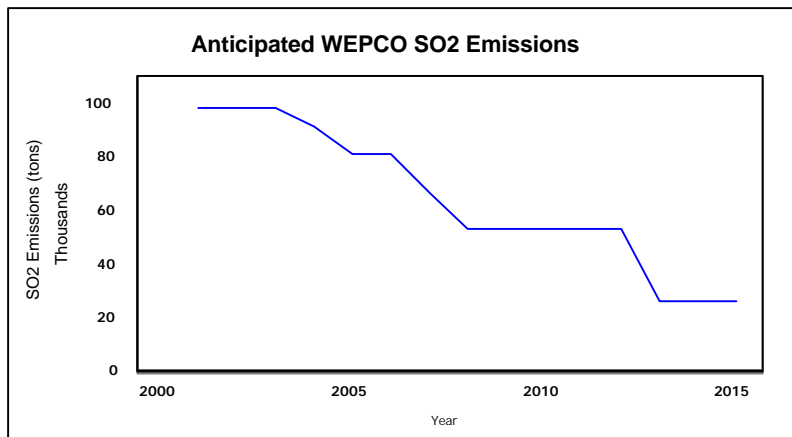
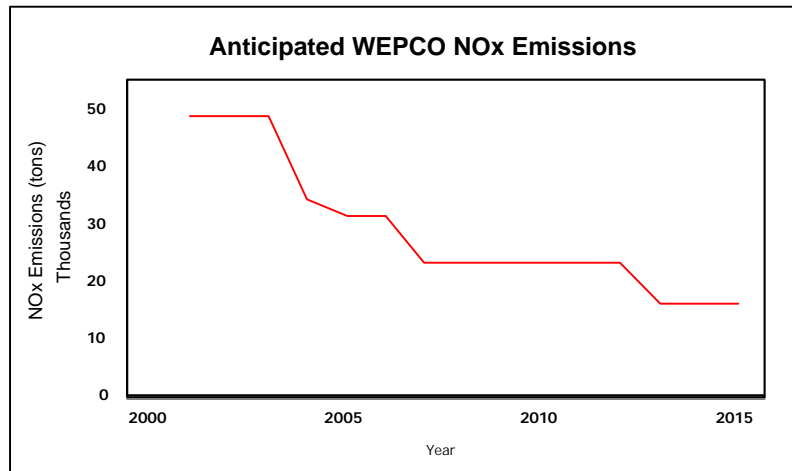
- Achieve 32,600 tons of NO_x reductions annually from WEPCO coal-fired plants by operating new state-of-the-art selective catalytic reduction control systems all year long, on a majority of its coal-fired power plant fleet. In addition, for the remaining units covered under the agreement, WEPCO must elect to install state-of-the-art NO_x controls or retire an additional percentage of generating capacity. WEPCO also must comply with a system-wide cap and rate controlling NO_x emissions at all of its major coal-fired facilities.
- The agreement also secures a very low PM emission rate (.030 lb/mmBtu) at all units within the WEPCO system.

Environmental Projects: Under the settlement WEPCO agreed to spend between \$20 to \$25 million for an environmental project, the TOXECON Project, in Northern Michigan. The TOXECON Project is designed to implement and explore innovative ways to reduce mercury at coal-fired power plants. It is estimated that the TOXECON Project will result in a 90 percent removal of all species of mercury at Presque Isle Units 7, 8 and 9. If the TOXECON Project is successful, WEPCO must continue to operate the installed control equipment.

Civil Penalty: WEPCO will pay a \$3.2 million civil penalty.

Location of WEPCO Coal-Burning Power Plants Covered Under Consent Decree:

- Presque Isle Generating Station in Marquette, Mich.;
- Pleasant Prairie Generating Station in Kenosha, Wis.;
- South Oak Creek Generating Station in Oak Creek, Wis.;
- Port Washington Generating Station in Port Washington, Wis.; and
- Valley Generating Station in Milwaukee, Wis.



Source: Office of Enforcement and Compliance Assurance, U.S. EPA, April 29, 2003